



# Legal Update

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February 2016

***The SJC holds that a charge of Reckless Endangerment of a Child requires proof that a defendant was actually aware that there was a substantial risk of serious bodily injury and that he consciously disregarded the risk.***

***Commonwealth v. Coggeshall***, SJC No. 11904 (2016).

Pursuant to G.L. c. 265 §13L, the following elements must be satisfied to prove Reckless Endangerment of a Child:

- (1) a child under age eighteen,
- (2) a substantial risk of serious bodily injury or sexual abuse, and;
- (3) the defendant wantonly or recklessly
  - (i) engaged in conduct that created the substantial risk, or
  - (ii) failed to take reasonable steps to alleviate that risk where a duty to act exists.

The SJC held that the statute does require proof of that the defendant was actually aware that there was a substantial risk involved. In the present case, the SJC determined that the Commonwealth proved that there was probable cause that the defendant was aware of the risk and disregarded the risk.

**For specific guidance on the application of these cases or any law, please consult with your supervisor or your department's legal advisor or prosecutor.**

**Background:** In August 2013, Halifax police officers were sent to investigate a report of two individuals walking on the Massachusetts Bay Transportation Authority (MBTA) tracks. The defendant, David Coggeshall, was holding his eleven year old son's hand for balance as they walked along the railroad tracks. The boy was carrying two plastic bags while trying to help his father from falling. At one point, the defendant, who was visibly intoxicated, fell on his back and landed between the tracks. When police arrived and questioned the defendant why he was on the tracks, he told them he had a few beers and was messed up. The officers escorted the defendant and his son off the track since the defendant was not able to walk on his own.

Police charged the defendant with Reckless Endangerment of a Child pursuant to G.L. c. 265, § 13L, and violating G.L. c. 160, § 218. The defendant argued that the police lacked probable cause to charge him with Reckless Endangerment of a Child because he was unaware that he had exposed his son to substantial risk of bodily injury. The SJC heard the case on appeal after a District Court judge allowed a motion to dismiss the reckless endangerment charge.

The issue before the SJC was whether the portion of G.L. c. 265, § 13L, that discusses wanton or reckless behavior requires proof of a defendant's state of mind.

**1<sup>ST</sup> ISSUE: DOES G.L. C. 265, § 13L REQUIRE PROOF OF THE DEFENDANT'S STATE OF MIND?**

The SJC ruled that the wanton and reckless element of § 13L does require proof that the defendant intended the risk or was subjectively aware of the risk. The Commonwealth maintained that a defendant does not need to be aware of the risk of injury, but that a defendant ought to reasonably have been aware of the risk. The SJC concluded that §13L requires proof of the defendant's subjective state of mind with respect to the risk involved and that the Commonwealth must prove that the defendant was actually aware of the risk.

**2<sup>ND</sup> ISSUE: DID THE DEFENDANT'S CONDUCT CONSTITUTE A SUBSTANTIAL RISK OF SERIOUS BODILY INJURY?**

The SJC held that the defendant engaged in behavior that exposed his son to a substantial risk of bodily injury. The defendant violated G. L. c. 160, § 218, when he chose to walk on the railroad tracks. It is well known that "a railroad track is a place of danger, and one, unnecessarily and voluntarily going upon it or so near to it as to be in a position of peril, must take active measures of precaution." *Joyce v. New York, New Haven & Hartford R.R. Co.*, 301 Mass. 361, 365 (1938). Apart from walking on railroad tracks, the defendant could not walk without his son's assistance. Because he needed to hold his son's hand to walk and to assist in **For specific guidance on the application of these cases or any law, please consult with your supervisor or your department's legal advisor or prosecutor.**

carrying some bags along the tracks, the defendant encouraged his son to violate G. L. c. 160, § 218.

Furthermore, the SJC found that walking along railroad tracks while intoxicated constituted a substantial risk of serious bodily injury, and a gross deviation from the standard of conduct that a reasonable person would observe in the situation. “At one point the defendant fell between the tracks. Not only did the defendant expose his son to the danger of walking alongside the tracks, but had a train approached while he was lying between the tracks, it is reasonably likely that the boy would have tried valiantly and desperately to remove his father to safety, thereby exacerbating the risk to his own safety and life.” Based on these factors, the SJC found that there was sufficient evidence to establish probable cause that the defendant exposed his son to a substantial risk of serious personal injury that no reasonable person would have permitted.

### **3<sup>RD</sup> ISSUE: DID THE COMMONWEALTH PROVE THAT THE DEFENDANT WAS ACTUALLY AWARE OF THE RISK?**

The Commonwealth contended that there was probable cause to believe that the defendant was “aware of and consciously disregard[ed] a substantial and unjustifiable risk that his acts . . . would result in serious bodily injury . . . to a child.” The Commonwealth argued that the defendant, by his own admission and actions, proved that he was aware of the risk involved in walking along the railroad tracks.

- The defendant told police that he "always walked on the tracks" which demonstrated that he knew what he was doing.
- The defendant knew his son was under the age of eighteen.
- The defendant knew his son was present in this dangerous situation because they were holding hands.
- The defendant admitted that he was messed up and that he had a few beers.

The SJC concluded that the probable cause requirement was met in this case. The defendant’s statements proved he was aware of his own condition and the cause of that condition. These factors, along with the defendant’s familiarity with railroad tracks and the common knowledge that railroad tracks are dangerous places to be walking, established probable cause that the defendant “wantonly or recklessly” engaged in conduct that created a substantial risk of serious bodily injury to his eleven year old son within the meaning of G. L. c. 265, § 13L.

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